

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
J.A. JACK AND SONS, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 84-53

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a Notice and Order of Civil Penalty for emitting particulate from a truck loading operation, came on before the Pollution Control Hearings Board; Lawrence J. Faulk and Gayle Rothrock (presiding), on April 18, 1984, at Seattle. The proceedings were reported by Sheila Mecartea of Rough and Associates court reporters.

Appellant company was represented by John Eckhart, Director. Respondent agency was represented by Keith D. McGoffin, attorney-at-law.

1 Witnesses were sworn and testified. Exhibits were admitted and
2 examined. Argument was heard. From the testimony, evidence, and
3 legal argument the Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent PSAPCA has submitted a copy of its Regulation I, of
7 which judicial notice is taken.

8 II

9 Appellant company transports, processes, and sells commercial and
10 agricultural limestone. Their handling and loading facility is in
11 south Seattle. Limestone (calcium carbonate) is a sedimentary rock--a
12 soft mineral which erodes quickly and has many uses.

13 In preparing calcium carbonate for transport to market or an
14 ultimate buyer the fine material--both visible and sub-micron
15 sized--pours from a tank through a spout into a waiting truck at this
16 facility.

17 II

18 On December 23, 1983, respondent's inspector observed fugitive
19 emissions from appellant's truck loading facility for at least 20
20 minutes. The inspector was on routine patrol in the area. The
21 emission appeared to be continuous, more than 60% opaque, with a plume
22 visible up to 200 feet away from the site, while gradually
23 dissipating. This indicated the larger particles settling out while
24 the smaller particles became suspended in the air. It was sunny,
25 clear and cold at 15 degrees Farenheit.

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1 Respondent's inspector was unable to make an opacity observation
2 under optimum plume evaluation conditions but noted the ongoing
3 particulate emissions problem.

4 III

5 The inspector took three photographs of the visual emissions
6 event. During the time of observation and photographing no persons at
7 the site were taking measures to halt or minimize the fugitive
8 emissions. The inspector contacted appellant's director of operations
9 in the plant. Appellant indicated the very cold weather had probably
10 frozen some air lines and caused the truck-loading vacuum system to
11 malfunction.

12 IV

13 A field notice of violation was issued that day, December 23,
14 1983. On January 23, 1984, Notice and Order of Civil Penalty No. 5936
15 for \$250 was issued. On February 9, 1984, appellant appealed to this
16 Board.

17 V

18 Appellant's truck-loading operation is located in a non-attainment
19 area as designated under federal ambient air quality standards. The
20 U.S. Environmental Protection Agency, in fact, has cited the area for
21 attaining unhealthful levels of suspended particulates, which are
22 injurious to human health, plant, or animal life. Such areas are
23 particularly vulnerable to any additional emissions.

1 VI

2 Appellant has received one prior notice of violation for fugitive
3 emissions exceeding opacity standards from the same truck-loading
4 operation.

5 VII

6 Any Conclusion of Law which should be deemed a Finding of Fact is
7 hereby adopted as such.

8 From these Findings the Board comes to these

9 CONCLUSIONS OF LAW

10 I

11 The Board has jurisdiction over these persons and these matters.
12 RCW 43.21B.

13 II

14 Under the Washington Administration Code at WAC 173-400-040(8) and
15 under Section 9.15 of respondent's Regulation I reasonable precautions
16 must be taken to prevent fugitive particulate matter from becoming
17 airborne when handling, transporting, or storing particulate
18 material. Here appellant's employees did not check for cold weather
19 effect on equipment or halt the loading operation when emissions were
20 occurring, thus the company was in violation of these fugitive
21 emissions standards.

22 III

23 In an ambient air standards non-attainment area extra precautions
24 taken to control emissions into the air are reasonable.
25 Unfortunately, the opportunity to render the air annoying and possibly

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1 harmful to life and property in such areas is easily available. Some
2 degree of annoyance or harm likely occurred in this instance. Section
3 9.15 of Regulation I does not permit omissions which are, or likely to
4 be, injurious to human health, plant or animal life, or property, or
5 which unreasonably interfere with enjoyment of life and property.

6 IV

7 Given the circumstances, the length of time limestone dust
8 emissions went uninterrupted, and the previous violation of
9 respondent's regulations, the full penalty issued is reasonable.

10 V

11 Any Finding of Fact which should be deemed a Conclusion of Law is
12 hereby adopted as such.

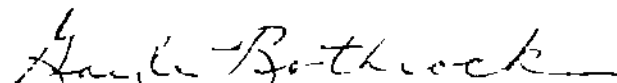
13 From these Conclusions the Board enters this
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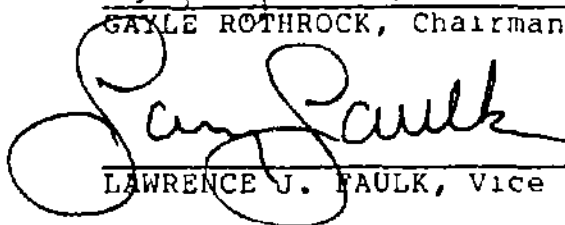
ORDER

Notice and Order of Civil Penalty No. 5936 is affirmed.

Done this 26TH day of April, 1984.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Chairman


LAWRENCE J. FAULK, Vice Chairman

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